

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

61529

FILE: B-187433

DATE: September 24, 1976

MATTER OF: Isiah Johnson & Titus Services Inc.

97974

DIGEST:


Determination by procuring agency not to set aside procurement under section 8(a) of Small Business Act is not subject to review by GAO in absence of fraud or bad faith of Government officials.

Mr. Isiah Johnson, owner of Titus Services Inc., a minority owned small business, has protested to this Office the decision not to set aside two Air Force procurements for janitorial services under section 8(a) of the Small Business Act. The "8(a)" set aside program is designed to assist small business concerns owned and controlled by socially or economically disadvantaged persons.

The protester alleges that another company of which he was president, had managed contracts for both requirements for 4 years under the section 8(a) program. Apparently the protester is no longer associated with his former company and now seeks 8(a) contracts for the requirements as owner of the protesting company. The protester contends that the SBA questioned its ability to perform and the Air Force determined to procure its requirements by unrestricted formal advertising without giving the protester an opportunity to be heard.

In view of the broad discretion accorded the SBA under the Small Business Act (15 U.S.C. § 637(a) (1970)) to enter into contracts with procuring agencies for the purpose of letting subcontracts to "8(a) firms", this Office no longer reviews decisions to set aside or not to set aside procurements unless the protester shows fraud on the part of Government officials or such willful disregard of the facts by Government officials as necessarily to imply bad faith. Automation Information Data Systems, Inc., B-185055, June 15, 1976, 76-1 CPD 377; Jet Services Inc., B-186066, May 4, 1976, 76-1 CPD 300; Baltimore Electronics Associates, Inc., B-185042, February 17, 1976, 76-1 CPD 105.

Accordingly, the protest is dismissed.


Paul G. Dembling
General Counsel